



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Advisory Neighborhood Commission 2D

June 20, 2017

The Honorable Eleanor Holmes Norton
Congresswoman, District of Columbia
United States House of Representatives
2136 Rayburn HOB
Washington, DC 20515

RE: Rejection of Congressional Attempts to Preclude Implementation of the District's
Death with Dignity Act

Dear Congresswoman Norton,

At its regular meeting on June 19, 2017, Advisory Neighborhood Commission 2D ("ANC 2D" or "Commission") considered the above-referenced matter. With 2 of 2 Commissioners in attendance, a quorum at a duly-noticed public meeting, the Commission approved the following resolution by a vote of (2-0-0):

WHEREAS, in recommended language for the Congressional appropriation act for the District of Columbia's Fiscal Year 2018 Budget, President Trump proposes that "None of the funds made available by this Act may be used to carry out the Death with Dignity Act of 2016 (D.C. Law 21-577) or to implement any rule or regulation promulgated to carry out such Act" (Appendix Sect. 818, available at <https://www.govinfo.gov/content/pkg/BUDGET-2018-APP/pdf/BUDGET-2018-APP.pdf>, at p. 1149),

WHEREAS, if enacted, this provision would bar use of local funds during Fiscal Year 2018, beginning October 1, 2017, to implement the District of Columbia's Death with Dignity Act,

WHEREAS, the Death with Dignity Act reflects the District's vigorous debate of this controversial legislation, including local hearings, intensive scrutiny, and amendments before its final approval by the Council of the District of Columbia and the Mayor,

WHEREAS, the proposed Budget appropriations act would dictate how the District's local funds can be spent, disregarding District legislation that asserts its budget autonomy,

WHEREAS, President Trump's proposed appropriation act language raises constitutional issues as to federal government power, federal government overreach, and violation of rights reserved to the people of the United States,

WHEREAS, proponents of this language presumably rely on the "District Clause" in the Constitution, Article I, Section 8, Clause 17, which provides that Congress shall have power "[t]o exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings,"

WHEREAS, this provision has historically been -- and should now be -- construed as intended only to authorize Congress to protect the security interests of the federal government, not to second guess the local government of the District of Columbia on local issues,

WHEREAS, President William Henry Harrison affirmed this limitation in his March 4, 1841 inaugural address, which continues to be valid today:

The people of the District of Columbia are not the subjects of the people of the States, but free American citizens. Being in the latter condition when the Constitution was formed, no words used in that instrument could have been intended to deprive them of that character. If there is anything in the great principle of unalienable rights so emphatically insisted upon in our Declaration of Independence, they could neither make nor the United States accept a surrender of their liberties and become the "subjects" -- in other words, the slaves -- of their former fellow-citizens. If this be true -- and it will scarcely be denied by anyone who has a correct idea of his own rights as an American citizen -- the grant to Congress of exclusive jurisdiction in the District of Columbia can be interpreted . . . as meaning nothing more than to allow to Congress the controlling power necessary to afford a free and safe exercise of the functions assigned to the General Government by the Constitution. In all other respects the legislation of Congress should be adapted to their peculiar position and wants and be conformable with their deliberate opinions of their own interests.

WHEREAS, if the District Clause were interpreted to empower the federal government to forbid the District to implement its Death with Dignity Act, that same Clause 17 would empower the federal government to forbid implementation of similar laws inside federal Forts, such as Fort Pendleton, California (one of the states with a Death with Dignity law),

WHEREAS, President Trump's proposed budget does not claim, much less demonstrate, that its proposed appropriation act language protects any security interest of the federal government,

WHEREAS, in addition, the Bill of Rights Amendments approved immediately after the original Constitution limit federal powers in order to block tyranny and federal overreach, and the Tenth Amendment specifically provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people,"

WHEREAS, nothing in the Constitution suggests that "the people" excludes Americans who happen to reside in the District of Columbia or that the people protected from governmental tyranny or overreach must reside in one of the States, and even without statehood or a vote in Congress, "the people" living in the District of Columbia retain those powers that are not expressly delegated to the federal government in the Constitution,

WHEREAS, Death with Dignity issues are best resolved locally, rather than by the federal government acting through the President and Congress, as they have in six states,

WEHEREAS, the District's Death with Dignity Act was modeled on Oregon's law and requires important implementing features such as monitoring, data collection, and annual reporting by the Department of Health, which are important to both supporters and opponents of the legislation, and a prohibition on using local funds for this purpose in Fiscal Year 2018 would set a precedent against funding for responsible monitoring in future years (even if startup funding can be expended before Fiscal Year 2017 ends).

THEREFORE, BE IT RESOLVED that ANC 2D requests, on behalf of the District of Columbia residents that it serves:

1. That our elected non-voting Delegate to the U.S. House of Representatives, together with our elected Mayor, Council of the District of Columbia, Attorney General, and Statehood delegation should object to, oppose, and seek defeat of the proposed appropriation act language that would prohibit expenditures to implement the Death with Dignity Act and that they seek to enlist support of fellow Americans who have voting representation in the U.S. Congress;
2. That Congress should not approve President Trump's proposed appropriation act language that would preclude the District from using local funds to implement the Death with Dignity Act; and
3. That Congress should not extend the federal government's reach to dictate matters unrelated to the security interests of the federal government, which the Constitution reserves to the people of the District.

Commissioners David Bender (2D01@anc.dc.gov) and Ellen Goldstein (2D02@anc.dc.gov) are the Commission's representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

A handwritten signature in black ink that reads "David R Bender". The signature is written in a cursive, slightly slanted style.

David Bender
Chair

CC: Mayor Muriel Bowser, Mayor, Government of the District of Columbia
Chairman Phil Mendelson, Chairman, Council of the District of Columbia
Karl Racine, Attorney General, Government of the District of Columbia
Senator Paul Strauss, D-DC/Shadow
Senator Michael D. Brown, D-DC/Shadow
Representative Franklin Garcia, D-DC/Shadow
Councilmember Mary Cheh, Ward 3
Eugene Kinlow, Director, Office of Federal and Regional Affairs